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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/695,619 | 10/28/2003 | Howard Elliott | 85328.88008 | 3907 |

22807 7590 09/08/2005

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| EXAMINER |
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PICKETT, JOHN G

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| ART UNIT | PAPER NUMBER |
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3728

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/695,619 | | ELLIOTT, HOWARD | |
| | Examiner | | Art Unit | |
| | Gregory Pickett | | 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/1/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braverman (US 3,924,748) in view of Margulies et al (US 4,294,361) and Hewelt et al (US 5,203,455).

Claim 1: Braverman discloses a container **20** for storing and dispensing consumer products **24** and comprising a tray **22** with generally planar top surface **28** and a plurality of cavities **32**, and a cover film **40** with pre-formed tear lines **42** and lugs **62**.

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Braverman lacks, or does not expressly disclose, preformed tear lines in the shape of the periphery of the cavities, nor an upwardly extending protrusion.

One of ordinary skill in the pertinent art would have recognized that the removal of the cover film as taught by Braverman would require delaminating over a large amount of adhesive area. Hewelt et al discloses pre-formed tear lines **10 & 11**, which correspond to the shape of the periphery of cavities **5**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to reshape the tear lines of Braverman to correspond to the shape of the cavities in order to limit the amount of adhesive area in contact with the torn away part and thereby reduce the force required for removal. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Retention of the lug **62** of Braverman would have been obvious in order to facilitate removal of the cover portion from over the cavity.

As to the upwardly extending protrusions, Margulies et al discloses protrusions **18** that are upwardly extending during the state as shown in Figure 3 and are used to present a pull-tab to the user (see Col. 2, lines 27-40 and Figures 3 & 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace openings **60** with protrusions as taught by Margulies et al in order to present lugs **62** for grasping by the user.

Claim 2: Braverman discloses adhesive **50**.

Claim 3: Braverman discloses an array as claimed (see Figures 1 and 5).

Claim 4: adhesive **50** of Braverman is peelable.

Claim 5: Braverman discloses patches **52**, which function as claimed.

Claim 6: it would have been obvious to one of ordinary skill to extend the patch into the lug in order to strengthen the lug for pulling.

Claim 7: Braverman discloses barrier film **44** with preformed tear lines **54**, and functions as claimed.

Claim 8: Braverman discloses further pre-formed tear line **56**.

Claims 11 and 12: Braverman discloses a paper film (Col. 4, lines 23-27), which non-rupturable within the meaning disclosed by the applicant.

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braverman-Hewelt-Margulies as applied to claim 8 above, and further in view of March (US 3,880,285).

It appears from the language of claim 9, that the applicant does not intend to invoke the provisions of 35 USC 112, 6th paragraph.

Braverman-Hewelt-Margulies discloses the claimed invention except for the locating means on the tray and cooperating means on the cover.

March discloses locating means 47 on tray 41 and cooperating means 49 on cover 16 and is used for rapid assembly of the device (Col 4, line 64 to Col. 5, line2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Braverman-Hewelt-Margulies with locating means and cooperating means as taught by March in order to facilitate rapid assembly of the device.

Allowable Subject Matter

3. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GP

Greg Pickett
Examiner
1 September 2005



Mickey Yu
Supervisory Patent Examiner
Group 3700